

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

MEMORANDUM AND ORDER

06-CR-0550 (JS)(AKT)

SANDRA HATFIELD, DAWN SCHLEGEL, and
DAVID H. BROOKS,

Defendants.

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APPEARANCES

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SEYBERT, District Judge:

Before the Court is a notice of appeal filed by D. David Cohen ("Cohen"), a victim that the Court previously held was entitled to restitution (Docket Entry 1903). For the foregoing reasons, the Court REJECTS Cohen's notice of appeal.

In March 2015, the Court ordered that defendants David Brooks, Sandra Hatfield, and Dawn Schlegel (collectively, "Defendants") pay \$91,665,846.93 in restitution pursuant to the

Mandatory Victims Restitution Act, 18 U.S.C. § 3663A ("MVRA"). (See Memorandum and Order on Restitution, Docket Entry 1869.) Cohen was identified as a victim and held entitled to approximately \$92,000.00 of those funds. (See Memorandum and Order on Restitution, Ex. 1 at 74.) Cohen now attempts to appeal that order.

Federal Rule of Appellate Procedure 4(b) governs appeals in criminal cases, and it provides no mechanism by which a non-party victim may appeal. See FED. R. APP. P. 4(b). In fact, it is axiomatic that a victim of a crime may not appeal the criminal defendant's sentence. United States v. Grundhoefer, 916 F.2d 788, 793 (2d Cir. 1990) ("The victim as a non-party is accorded only a limited presence at a sentencing proceeding and has no right to appeal an inadequate remedy.").

The Second Circuit has stressed that the Court's entry of a restitution order does not empower victims to appeal. See, e.g., In re Rendon Galvis, 564 F. 3d 170, 176 (2d Cir. 2009) (holding that the Victims and Witness Protection Act, 18 U.S.C.A. § 3663, provides no private right of action for victims denied restitution); United States v. Mindel, 80 F.3d 394, 397 (9th Cir. 1996) (same); see also United States v. Franklin, 792 F.2d 998, 999-1000 (11th Cir. 1986) ("[N]o statute . . . give[s] us the authority to entertain an appeal by a victim, such as appellant,

who was not a party to the sentencing proceeding in the district court.”)

Cohen, as a non-party victim to this criminal proceeding, may not appeal the Court’s sentence of Defendants, including the restitution order. Accordingly, the Clerk of the Court is directed to REJECT Cohen’s notice of appeal (Docket Entry 1903).

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: June 16, 2015
Central Islip, New York